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No. 89-1765

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

FLORIDA DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY, PETITIONER

v.

UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the interest provision of the Debt Collection Act of 1982, 31 U.S.C. 3717, barred the Secretary of Labor from collecting interest on the contractual debt of $6,555 petitioner owed to the United States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A2-A13) is reported at 893 F.2d 1319. The final decision and order of the Secretary of Labor (Pet. App. A14-A27) and the decision and order of the administrative law judge (Pet. App. A30-A41) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 1990. The petition for a writ of certiorari was filed on May 10, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. During the 1970s and early 1980s, petitioner, the Florida Department of Labor and Employment Security, entered into a series of contracts and grant agreements with the federal government under which the State of Florida received funds under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. 801 *et seq.* (Supp. V 1981) (repealed 1982).[1] In those contracts and agreements, petitioner agreed to monitor and supervise subgrantees and contractors carrying out the State's CETA programs in order to ensure that recipients of federal funds complied with CETA and governing regulations. Pet. App. A9; see 29 U.S.C. 813(a)(11) and (12) (Supp. V 1981); 20 C.F.R. 676.10-4(g), 676.75-1 to 676.75-3. In addition, the contracts and agreements obligated petitioner to preserve records and undergo periodic audits and examinations, all of which were subject to review by the Secretary of Labor. Pet. App. A9; see 29 U.S.C. 835(a)(1) (Supp. V 1981).

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[1] Congress repealed CETA in 1982 by enacting the Job Training Partnership Act (JTPA), Pub. L. No. 97-300, 96 Stat. 1324 (codified at 29 U.S.C. 1501 *et seq.*). Section 181(d) of the JTPA, 29 U.S.C. 1591(d), provides in pertinent part that

> [a]ll * * * permits, grants, contracts, certificates, licenses, and privileges which have been issued under the Comprehensive Employment and Training Act (as in effect on the date before October 13, 1982), or which are issued under that Act on or before September 30, 1983, shall continue in effect until modified or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law other than this chapter.

Section 181(e) of the JTPA, 29 U.S.C. 1591(e), provides that the JTPA

> shall not affect administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982, and September 30, 1984, under the Comprehensive Employment and Training Act.

Between October 1, 1980 and June 30, 1982, petitioner received approximately $27.2 million in CETA funds from the federal government. Pet. App. A3. As a result of an independent audit completed in May 1984 and administrative review by the Department of Labor, the Department determined that petitioner had improperly expended a small portion of those CETA funds. The Department later agreed that petitioner owed the federal government $6,555 plus interest. Petitioner disputed its liability and obtained a hearing before an administrative law judge. Pet. App. A3-A4, A30-A31.

2. The ALJ affirmed petitioner's liability for the $6,555 debt. Pet. App. A30-A39. The ALJ, however, concluded that the interest provision of the Debt Collection Act of 1982, codified in relevant part at 31 U.S.C. 3717, barred the Secretary of Labor from collecting interest on that debt, because the Act excluded the States from the definition of "person[s]" subject to the interest provisions. Pet. App. A39-A41 (citing 31 U.S.C. 3701(c), 3717).

The Secretary of Labor reversed the ALJ's decision to the extent it barred the collection of interest on petitioner's debt. Pet. App. A14-A27.[2] The Secretary recognized that the Debt Collection Act "exempts state government agencies from the mandatory imposition of interest charges." *Id.* at A16; see 31 U.S.C. 3701(c), 3717(a)(1). Nevertheless, the Secretary concluded that the statute "does not abrogate the Federal government's common law right to assess interest against entities not covered by the Act." Pet. App. A16. Finally, the Secretary found that "[t]he loss suffered by the intended CETA beneficiaries occasioned by [petitioner's] misexpenditures, is direct and measurable, and the public is equitably entitled to the interest on such funds." *Id.* at A20.

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[2] The Secretary rejected petitioner's request to forgive the $6,555 debt on equitable grounds. Pet. App. A20-A21. Petitioner abandoned that challenge in the court of appeals and does not renew it here.

3. The court of appeals affirmed. Pet. App. A2-A13. The court, however, did not rule on petitioner's contention that the express terms of the Debt Collection Act abrogated the Secretary's common law authority to collect interest. Instead, recognizing that under 31 U.S.C. 3717(g)(2), the Act's interest provision does not apply "to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982,"[3] the court found that petitioner's contracts and grant agreements with the federal government were "in effect" in October 1982, and thus the Debt Collection Act was inapplicable.[4] As the court noted, petitioner

> assumed continuing responsibilities for monitoring the actions of its contractors and subrecipients to ensure that their actions complied with the program's statutory and regulatory requirements. Among other things, these responsibilities included the continued monitoring and auditing of subrecipients to ensure that their records were being kept in accordance with program regulations and to ensure that the subgrant funds were being expended in compliance with CETA.

Pet. App. A9 (footnotes omitted). Moreover, the court pointed out that "[i]t [was] uncontested that [petitioner], as part of its monitoring obligations, engaged in these activities." *Ibid.*[5]

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[3] Petitioner did not dispute that the CETA grants "may be considered contracts," Pet. App. A7, and that those contracts were executed before October 25, 1982, *id.* at A8.

[4] Although the Secretary raised that argument for the first time on appeal, the court of appeals agreed to consider it. Pet. App. A6-A7. Petitioner does not challenge that aspect of the court of appeals' judgment.

[5] Petitioner also contended that under 31 U.S.C. 3717(g)(2), the government's "claim," as opposed to the contract, must have been "in effect on October 25, 1982." Since the Secretary's claim did not accrue

ARGUMENT

Petitioner contends (Pet. 6-10) that the court of appeals misconstrued 31 U.S.C. 3717(g)(2). The express terms of the statute, however, preclude petitioner's argument in the circumstances of this case. Section 3717(g)(2) provides that the Act does not apply "to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982." The "in effect" requirement, contained in a subordinate clause modifying the term "contract," plainly shows that the Act is inapplicable to a *contract* that was entered into before, and in effect on, the relevant date. Whether or not a claim had been filed on or before that date is irrelevant.[6] Here, petitioner's contracts and grant agreements with the federal government were "in effect" on October 25, 1982, because petitioner was obligated to monitor and supervise CETA subcontractors and subgrantees—contractual activities that petitioner undertook in 1984. See Pet. App. A9, A30-A31. Accordingly, the court of appeals correctly held that the Debt Collection Act did not apply to the contracts at issue. Since petitioner conceded that the

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until 1984, petitioner argued, the Act otherwise applied to this case. Pet. App. A10. The court of appeals rejected this "strained interpretation of the statute," concluding that neither the language nor the legislative history of the Act supported petitioner's reading of the provision. *Ibid.*

Instead of remanding the case to the Secretary for further proceedings, the court of appeals affirmed the Secretary's imposition of interest. Pet. App. A11-A12.

[6] Petitioner suggests (Pet. 9-10) that this reading of the statute is inconsistent with this Court's decision in *West Virginia* v. *United States*, 479 U.S. 305 (1987). That suggestion is meritless, since the Court plainly stated that the statute, namely, Section 3717(g)(2), "does not apply to claims arising under *contracts* entered into before October 25, 1982." 479 U.S. at 312 n.5 (emphasis added). The date of the claim was given no significance.

Secretary otherwise has authority to collect interest, the court of appeals correctly upheld the Secretary's order.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[7] Petitioner contends that the court of appeals' decision conflicts with two cases denying authority to charge interest against the States – *Perales* v. *United States*, 751 F.2d 95 (2d Cir. 1984), and *Pennsylvania* v. *United States*, 781 F.2d 334 (3d Cir. 1986). This contention is without merit. In *Perales*, neither the district court in its decision (598 F. Supp. 19, 23-26 (S.D.N.Y. 1984)), nor the court of appeals in its one-paragraph affirmance, addressed the question decided below – of the meaning and application of Section 3717(g)(2). Similarly, in the *Pennsylvania* case, the Third Circuit never considered the question whether Section 3717(g)(2) rendered the Debt Collection Act inapplicable.

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